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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re CHAMPION RUBBER PRODUCTS COMPANY in Voluntary Dissolution.	
JOHN S. WILLIAMS, as Public Administrator, etc., Plaintiff and Respondent, v. WILLIAM SNOW HUME, Defendant and Appellant.	G035989 (Super. Ct. No. A-231676) O P I N I O N

Appeal from an order of the Superior Court of Orange County, Marjorie Laird Carter, Judge. Affirmed.

William Snow Hume, in pro. per, for Defendant and Appellant.

Benjamin P. de Mayo, County Counsel and James C. Harvey, Deputy County Counsel for Petitioner and Respondent.

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I. *Background*

In March 2004, William Snow Hume and Stefan A. Stitch, as unsecured creditors of Champion Rubber Products, filed suit in Los Angeles Superior Court (the headquarters of the firm was in the City of Commerce) against the company for various orders and injunctive relief, seeking, among other things, appointment of directors and a waiver of any claims against the estates of either of Hume's parents.[1] The corporation defaulted, but before a default judgment could be obtained, the Orange County public administrator filed a "petition for court supervision of voluntary winding up of corporation ancillary to decedent's estate," in the probate department of the Orange County Superior Court, the decedent being Hume's father Edward, who had owned all the stock in Champion Rubber. Hume made a motion to transfer the proceeding to Los Angeles and also filed a response in opposition to the petition, in which he asserted that the court in Orange County could not assert jurisdiction over the company, given its physical location in Los Angeles County and given the prior pending action in Los Angeles Superior Court. The trial court entered an order granting the public administrator's petition for court supervision, and appointing him to "conduct the winding up" of the affairs of Champion Rubber pursuant to section 1805, subdivision (b) of the Corporation Code. The net effect was that Hume and Stitch would have to file any claims against Champion Rubber with the public administrator.[2] Also, all suits against the company were stayed, including (though the order granting the petition did not specifically mention it) the suit in Los Angeles.

Within two weeks of the order granting the public administrator's petition Hume filed a notice of appeal. His opening brief presents these three issues: (1) Could

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[1] Hume has asserted that he had "rights to be Controller and acting General Manager" of the corporation, and also believes that he has "rights to compensation resulting from wrongful termination or the shutting down of the corporation." In the opening brief we learn that Stitch was a salesperson for the company.

[2] There is no issue before us regarding the propriety of the decision of the public administrator to liquidate the company by filing the wind up action. Hume has voiced the theme of a conflict of interest on the part of the public administrator obliquely here and there at the trial level as well as in the opening brief, based on the estate's ownership of the land on which the corporation did business. While perhaps explaining some of Hume's motives in opposing the imposition of jurisdiction by the trial court, the issue is otherwise irrelevant to the issues presented by this appeal.

the court in Orange County assert jurisdiction given the previously filed action in Los Angeles County? (2) Was venue in Orange County proper given Champion's headquarters in the City of Commerce? (3) Could the *probate department* of the Orange County Superior Court properly take supervision of the winding up of Champion's affairs? (Other issues, only presented by subheadings on the last page of the opening brief, have not been developed -- there literally is no text under the subheadings -- and are therefore waived. (See *Osborn v. Hertz Corp.* (1988) 205 Cal.App.3d 703, 707-708 [argument that trial court wrongfully denied plaintiff discovery was waived because "the absence of a coherent argument in her brief describing the discovery and the circumstances of its denial, and citing legal authorities"].))[3]

II. *Appealability*

Looking to the substance of Hume's challenge to the jurisdictional order, we conclude that the probate's court order is the equivalent of an order appointing a receiver, made applicable by Code of Civil Procedure section 904.1, subdivision (a)(7), and therefore we may entertain the merits of Hume's arguments relating to the imposition of jurisdiction. However, an order denying a motion to change venue is not appealable, so we specifically do not reach that particular issue. (See *Calhoun v. Vallejo City Unified School Dist.* (1993) 20 Cal.App.4th 39, 41-42 ["Review of an order granting or denying a motion for change of venue lies only by petition for writ of mandate. . . . The order is not appealable by statute . . . or by any of the 'clearly mandated' exceptions to the one final judgment rule . . . ."].)[4]

III. *Effect of the Prior Pending Action*

The statutory authority for requesting that the court take jurisdiction over the process of winding up a corporation's affairs is set out in Corporations Code section

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[3] We must deny Hume's motion for leave to file a late reply brief, filed the day before oral argument. While there is no doubt that the unfortunate -- perhaps tragic would be better word -- circumstances related in the motion (including heart attacks, homelessness and unemployment) would indeed furnish good cause for extra time to prepare a brief due to the court, it is unfair to the respondent public administrator not to give him sufficient time to digest a document prior to oral argument.

[4] For this reason all outstanding requests for judicial notice, which bear on the issue of venue, are denied.

1904. Given the nature of this case, the statute should be quoted in full. (The significance of the emphasized words will become apparent quickly.) "If a corporation is in the process of voluntary winding up, the superior court of the proper county, upon petition of (a) the corporation, or (b) a shareholder or shareholders who hold shares representing 5 percent or more of the total number of any class of outstanding shares, or (c) any shareholder or shareholders of a close corporation, or (d) *three or more creditors*, and upon such notice to the corporation and to other persons interested in the corporation as shareholders and creditors as the court may order, may take jurisdiction over such voluntary winding up proceeding if that appears necessary for the protection of any parties in interest. The court, if it assumes jurisdiction, may make such orders as to any and all matters concerning the winding up of the affairs of the corporation, and for the protection of its shareholders and creditors as justice and equity may require. The provisions of Chapter 18 (commencing with Section 1800) (except Sections 1800 and 1801) shall apply to such court proceedings." (Italics added.)

While the nature of the earlier Los Angeles suit is only hazily sketched in the record (in Hume's own declaration), what is clear is that Hume and Stitch's Los Angeles action by definition could *not* have been an action to seek court supervision for the winding up of Champion Rubber pursuant to Corporations Code section 1904. A winding up action brought by creditors requires three creditors; this record only shows two. And, while the rule of exclusive concurrent jurisdiction does not require identical parties, causes of action, or remedies, the rule does require at least an overlap of subject matter. (See *People ex rel. Garamendi v. American Autoplan, Inc.* (1993) 20 Cal.App.4th at p. 760, 769.) Here, there is nothing in the record that indicates that the earlier suit was concerned with the subject matter of *winding up* Champion Rubber's affairs, as distinct from protecting the claims of two creditors, perhaps by way of instituting new directors.[5]

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[5] Arguably, section 1806, subdivision (h) of the Corporations Code would override any application of the doctrine of exclusive concurrent jurisdiction in any event, because it expressly provides that the winding up proceeding gives the court jurisdiction to stay "prosecution of any suit, proceeding or action against the corporation." The catch is that the statute begins with the words "When an *involuntary* proceeding for winding up has been commenced . . . ."

IV. *The Problem of Filing in the "Probate Court"*

Hume's last point is ostensibly jurisdictional. He argues that the "probate court," *qua* probate court, has no subject matter jurisdiction to hear a certain class of case, to wit, corporate wind ups. The issue is somewhat complex, and will require some untangling. We will go step by step.

First, we must define the issue precisely. The implicit distinction between the normal superior court and the "probate court" that is the foundation of Hume's argument must be delineated. As this court (indeed, in a case heard by two of the three members of this panel) recently said in *In re Michael R.* (2006) 137 Cal.App.4th 126, 131, footnote 1: "Technically, California does not have 'probate courts.' 'The term "probate court" is but a convenient way of expressing the concept of a *superior court sitting in exercise of its probate jurisdiction*. This is but a colloquial expression . . . .'" (Italics added.)

To be fair to Hume, then, his point is not that the Orange County Superior Court does not have "jurisdiction" to hear the matter of the winding up of Champion Rubber Incorporated. What he really objects to is this particular superior court's hearing the matter in the *exercise* of its probate jurisdiction.

Second, let us grant that *normally* corporate wind ups pursuant to section 1904 of the Corporations Code would be handled by the superior court as regular civil matters. Most of the time, when a corporation requires winding up, there is no death or conservatorship involved that might even arguably implicate the "exercise" of a court's "probate jurisdiction."

However, third -- and this is perhaps the most crucial point in our logic -- let us also grant that at least *some* corporate wind ups implicate or even require the "exercise" of the superior court's "probate jurisdiction." The exercise of probate

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(italics added), and the substance of this action is that the winding up is voluntary, initiated by the estate of the sole shareholder.

jurisdiction surely includes the settling of estates of deceased persons, and settling the estates of deceased persons surely includes matters dealing with the administration of estate property, such as stock, as in the case before us, wholly owned by the decedent. (E.g., Prob. Code §§ 1061, subd. (a) [required accounts include net income from trade or business and property on hand at end of accounting period].) As *Estate of Beard* (1999) 71 Cal.App.4th 753, 772-773 stated: "As an incident of its function of settling the estates of deceased persons and passing upon final accounts, a court sitting in probate has continuing jurisdiction to determine *any questions arising from controversies over the administration of estate property*, in order to prevent fraud and waste." (Italics added.)

Even assuming, then, that the petition to wind up the affairs of Champion Rubber should have been filed as a normal civil matter in the Orange County Superior Court (as distinct from directly in the department of that court that normally considers probate matters, and that is debatable in its own right)[6] it is safe to say that the Champion Rubber wind up matter could be readily consolidated with the administration of the estate of Edward Hume's estate. If, in *Estate of O'Connor* (1996) 48 Cal.App.4th 1076, the matter of an insurance company's obligation on a bond issued to an embezzling conservator could be consolidated with the matter of the administration of the conservatee's estate, surely a matter dealing with the administration of property solely owned by a decedent (who had also been a conservatee before his death) could be consolidated with the administration of that very estate.

The statute in the Code of Civil Procedure that lays down the basic rules for consolidations, section 1048, subdivision (a), is the basic "common questions of law or

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[6] Which itself is an interesting issue. Orange County Superior Court local rules appear ambiguous as to where *this* petition should have been filed. Rule 431 states in pertinent part: "All cases described as personal injury, eminent domain, and other civil, filed after January 1, 1991, are subject to civil case management. Abandonment, adoption, mental health and civil petitions (including extraordinary writs), conservatorship, family law *and related matters* are excluded from civil case management." (Italics added.) Rule 432 then goes on to provide that all cases "subject to civil case management" are to be "randomly assigned to a judge for all purposes" subject to the presiding judge's power to reassign. While Orange County local rules involving probate matters are extremely detailed (they easily take up the largest amount of space of any division of the local rules) they do not define matters falling within the exercise of probate jurisdiction as such, though they do clearly contemplate adjudication of petitions to determine title to decedent's property and even continue operation of decedent's business. (Local rules 607.03 and 607.04.)

fact" that first year civil procedure students learn studying analogous federal law. Section 1048, permits consolidation when "actions involving a common question of law or fact are pending before the court" and further empowers the trial court to "make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay." Hume's very concern in this case illustrates the legal and factual commonality of the two actions: How much of the same assets (of the corporation) are available to the estate and how much are available to pay Hume as creditor of the corporation? Given that the public administrator might have brought a consolidation motion if the case had been filed as a normal civil matter, and given that the presiding judge would easily have been within her discretion to grant the motion, we cannot say that there is a *jurisdictional* bar to a "probate court" hearing both matters.

Finally, and most directly of all, section 2630 of the Probate Code expressly makes adjudication of matters *incident* to the settling of accounts when a conservatee dies (which is precisely the case before us). Section 2630 provides: "The termination of the relationship of guardian and ward or conservator and conservatee by the death of either, by the ward attaining majority, by the determination of the court that the guardianship or conservatorship is no longer necessary, by the removal or resignation of the guardian or conservator, or for any other reason, does not cause the court to lose jurisdiction of the proceeding for the purpose of settling the accounts of the guardian or conservator or for *any other purpose incident to the enforcement of the judgments and orders of the court upon such accounts* or upon the termination of the relationship." (Italics added.)

The adjudication of the winding up of Champion Rubber is thus independently within the exercise of the court's probate jurisdiction under section 2630. We may take it as given that a conservator, acting in the best interests of a conservatee, could initiate the liquidation, under section 1904 of the Corporations Code, of a corporation solely owned by the conservatee. After all, the conservatee might need the money! And it is somewhat scary to contemplate the idea of a probate department *not* supervising a conservator's liquidation of a corporation solely owned by a conservatee,

since the potential for abuse (e.g., pilfering by the conservator) would be enhanced if one court supervised the winding up while another supervised the ensuing accounting.

If, then, a probate court has jurisdiction over a conservator's initiation of a corporate wind up during the pendency of a conservatorship, under section 2630 it has jurisdiction over a corporate wind up initiated by a former conservator, now administrator of a probate estate.

Hume cites three cases, *In re Winder* (1950) 99 Cal.App.2d 83; *Estate of Setrakian* (1956) 140 Cal.App.2d 926,[7] and *In re Massaglia* (1974) 38 Cal.App.3d 767, 778-779 as basically standing for a per se rule that the probate department of the superior court (or, if one pleases, "the probate court") should not involve itself in corporate windings up. Of the three, one, *Winder*, does indeed support his argument, the second, *Setrakian*, impliedly undercuts it, and the third, *Massaglia*, directly contradicts it. We'll start with the oldest, *Winder*.

Winder reversed the order of "the probate court" by which an estate sought to take "certain designated actions" regarding a corporation -- basically the estate's administrators wanted the court's imprimatur to close a corporate office and rent the property out. (See *Winder*, *supra*, 99 Cal.App.2d at p. 84.) The reason was the need to differentiate between actions that might be properly taken by the corporation's *board*¸ as distinguished from its *shareholders*. The two actions could not be confused under the rubric of saying that the estate was merely seeking instructions on how to vote the corporate stock. (*Id*. at p. 85.)

To round out the picture, the appellate court also noted that the record did not support the idea that the corporation was the alter ego of the deceased. And it further noted that the estate's administrators admitted that "the estate has no power to act in reference to corporate matters." (*Ibid*.)

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[7] Hume misspelled "Setrakian" in his brief as "Satrakian." The county counsel asserts that it could not find the case and therefore any argument based on the case should be waived. But the case is easy enough to find. Both Lexis and Westlaw have "find by citation" modes by which entering "140 Cal.App.2d 926" would have turned up the opinion.

Setrakian, by contrast, implies that the "probate court" had the power to order executors to act with regard to a corporate liquidation, albeit in that case to restrain them from liquidating a corporation. The court framed the jurisdictional issue before it thusly: "The second and remaining contention of appellants is that the court erred in restraining the executors from voluntarily dissolving the corporation and acted in excess of its jurisdiction sitting as a probate court." (*Setrakian, supra*, 140 Cal.App.2d at p. 931.) The court then quoted former section 300 of the Probate Code to the effect that all property of a decedent is subject to the "possession of the executor or administrator and to the control of the superior court for the purposes of administration, sale or other disposition." (*Id*. at pp. 931-932.) The court then quoted *County of Los Angeles v. Morrison* (1940) 15 Cal.2d 368, 371 to the effect that the "probate court or judge is the guardian of estates of deceased persons and all proceedings are under the direction of the judge." Finally, the decision went on to say that the probate court had substantial evidence to prevent the executors from trying to liquidate the deceased's shares in two corporations unless the estate received a minimum price. (See *id*. at pp. 932-933.) Such a result hardly suggests a hard jurisdictional barrier to keep a probate court outside any corporate affairs; if the court had power to restrain executors from liquidating, it had the power to order them to liquidate.

The final case, *Massaglia*, was discussed in depth in *Conservatorship of Hume* (2006) 139 Cal.App.4th 393, 402. The point of our discussion there was the *Massaglia* holding that estate administrators "can't just ignore foreign real property." That is, the bank administrators in *Massaglia* were held accountable *in probate court* for not taking action regarding their ownership of stock to prevent a certain New Mexico hotel from foreclosure. To be true, *Massaglia* cited *Winder* for the proposition that if stock of a corporation is "entirely owned by a decedent during his lifetime the latter's estate is simply the stockholder and not the corporation" (*Massaglia, supra*, 38 Cal.App.3d at pp. 778-779), and that is presumably the reliance Hume places upon it here. However, the case actually holds that estate representatives could be held *responsible in probate court* to take action in the estate's capacity as *shareholder* to

preserve property owned by the corporation, in the process juxtaposing its ultimate ruling against *Winder's* differentiation between stockholder and corporation. (*Id*. at p. 779 [after citing *Winder*, *Massaglia* court says "This is not to say that the conduct of an executor or administrator with respect to a corporation wholly owned by the decedent is totally immune from judicial scrutiny."].) Indeed, the appellate court *rejected* the idea that the probate court "lacked jurisdiction" to "inquire into or resolve the claim of mismanagement" of property that constituted an asset of a corporation of which the estate was the sole shareholder. (*Ibid*. ["To the extent that the court failed to inquire into or resolve the claim of mismanagement on the ground that it lacked jurisdiction so to do, error was committed."].)

What are we to make of this trio? *Massaglia* is direct authority for the proposition that a superior court, in the exercise of powers under the Probate Code, can hold administrators responsible for the actions they take when the decedent owned a corporation and the administrators have the power, as the decedent's successor, to *manage* corporate assets for the ultimate benefit of the estate. *Setrakian* is indirect authority for the same thing by negative implication, which leaves *Winder*.

Getting down to brass tacks, the court in *Winder* relied strictly on the distinction between the estate as stockholder and the corporation itself, taking for granted the *concession* by the executors that the "estate had no power to act in reference to corporate matters." But why couldn't the estate act in "corporate matters?" The quintessential task of the superior court in proceedings under the Probate Code is to ascertain the extent of an estate and distribute it, and surely that task includes the power over how the administrator votes the stock. (Again -- when one contemplates the enhanced potential for abuse in cases where one court supervises a wind up with the probate court left with the hindmost, the wisdom (not to mention efficiency) of having one court attend to both matters is manifest.)

The distinction on which *Winder* rested was obsolete even at the time it was pronounced. Does a "probate" court have the power to hold an executor to account for the way he or she "votes" the stock of a corporation of which the decedent was the sole

shareholder? Absolutely -- as shown by *Estate of Bonaccorsi* (1999) 69 Cal.App.4th 462, 467, another case from this court, which clearly held that an executor could be held responsible in the probate court for the way in which he *voted* stock solely owned by the estate. That case even noted that *Estate of Barreiro* (1932) 69 Cal.App. 742, a case which antedated *Winder* by almost two decades, likewise allowed a probate court to hold an executor to account (he was surcharged) for expenses incurred by a closely held corporation over which the executor had power by being able to vote its stock. (See *Bonaccorsi, supra*, 69 Cal.App.4th at p. 469, citing *Estate of Barreiro, supra*, 125 Cal.App. 752.)

The *Bonaccorsi* rule makes perfect sense: Why should a court whose primary task is to determine the extent of an estate and distribute it not be able to make orders as to the way the executor conducts the affairs of a valuable asset of the estate, particularly when that asset is within the *complete* control of the executor?[8] The *Winder* court's rule merely caused unnecessary duplicate proceedings at the substantive expense of the main task of the "probate" court. Thus to the degree that the *Winder* result is inconsistent with our decision today, it is because it is also inconsistent with *Massaglia*, *Barreiro*, and *Bonaccorsi*, and impliedly inconsistent with *Setrakian*, and we respectfully decline to follow it.

We recognize that there is an old strain in conservatorship law to the effect that "conservatorship proceedings are not a proper forum for adjudication of third party claims." (*Estate of Starr* (1989) 215 Cal.App.3d 1390, 1395, noting rule of *Guardianship of Breslin* (1901) 135 Cal. 21, 22, *Guardianship of Vucinich* (1935) 3 Cal.2d 235, 243, and *Guardianship of Rapp* (1942) 54 Cal.App.2d 461, 464). However, it was established (even prior to section 800) as regards estate administration that a "probate court" has

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[8] Even if we had a case where the executor or administrator was the successor to only a portion of the stock of a corporation our result would be the same, though, of course, the power of the court sitting in probate would be limited by the power conferred on the executor or administrator by the stock. In the case before us, of course, the stock gives the public administrator complete control of the corporation, including the power to "vote" to have it liquidated pursuant to section 1904 of the Corporations Code, so we are spared the issue of whether the court sitting in probate could entertain a corporate wind up if the decedent's stock didn't confer that power.

jurisdiction to hear third party claims when "a controversy has sufficient connection with a pending probate proceeding to be properly litigated therein," the rationale being that it facilitates judicial efficiency, particularly when the parties are the same. (*Estate of Mullins* (1989) 206 Cal.App.3d 924, 929, relying on *Estate of Baglione* (1966) 65 Cal.2d 192, 196-197.) As our high court put it in *Estate of Baglione* "To deny a superior court sitting in probate the power to determine the whole controversy between the parties before it is pointless." (*Estate of Baglione*, *supra*, 65 Cal.2d at p. 197.) Of course, since *Estate of Baglione* the Legislature has conferred, by way of section 800 of the Probate Code, on the probate court the "same power with respect to proceedings" under the Probate Code it would have in ordinary litigation, and surely that "same power" includes an ancillary power to determine the claims of third parties against a major asset of the estate, here a solely owned corporation.

V. *Disposition*

The order is affirmed. Respondent is to recover its costs on appeal.

SILLS, P. J.

WE CONCUR:

BEDSWORTH, J.

FYBEL, J.